

# HOUSE BILL No. 1370

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-12-4; IC 14-8-2-162; IC 14-10-2-1; IC 14-9-7-5; IC 14-22-34-22; IC 14-23.

**Synopsis:** State forests. Requires the department of natural resources (department) to prepare annual statements of proposed removal of merchantable timber from state forests and proposed replanting of trees after the removal of timber. Requires an environmental impact statement before the department may proceed with the proposed activities. Establishes a procedure for public comment with respect to the proposed activities and the environmental impact statements. Allows a member of the public to appeal to the natural resources commission a determination of the department to proceed with the proposed activities. Prohibits the removal of timber: (1) less than 500 yards from a trail in Morgan-Monroe and Yellowwood state forests; and (2) during migratory bird nesting seasons in all state forests. Creates the position of state forest ecologist in the department and prescribes the duties of the position. Establishes a process for the division of fish and wildlife to prepare and implement management plans for threatened or endangered species. Requires the division of forestry to give priority to the establishment in state forests of trails that are for the use of pedestrians only and are located in areas free of development.

**Effective:** July 1, 2008.

**Pierce**

January 16, 2008, read first time and referred to Committee on Natural Resources.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## HOUSE BILL No. 1370

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 13-12-4-5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. **(a)** To the fullest  
3 extent possible:

4 (1) the policies, rules, and statutes of the state shall be interpreted  
5 and administered in accordance with the policies set forth in this  
6 chapter; and

7 (2) all state agencies shall do the following:

8 (A) Use a systematic, interdisciplinary approach that will  
9 ensure the integrated use of the natural and social sciences and  
10 the environmental design arts in planning and decision making  
11 that may have an impact on the environment.

12 (B) Identify and develop methods and procedures that will  
13 ensure that unquantified environmental amenities and values  
14 may be given appropriate consideration in decision making  
15 along with economic and technical considerations.

16 (C) **Subject to subsection (b)**, include in every  
17 recommendation or report on proposals for legislation and



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other major state actions significantly affecting the quality of the human environment a detailed statement by the responsible official on the following:

- (i) The environmental impact of the proposed action.
- (ii) Any adverse environmental effects that cannot be avoided should the proposal be implemented.
- (iii) Alternatives to the proposed action.
- (iv) The relationship between local short term uses of the environment and the maintenance and enhancement of long term productivity.
- (v) Any irreversible and irretrievable commitments of resources that would be involved if the proposed action should be implemented.

Before making a detailed statement, the responsible state official shall consult with and obtain the comments of each state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of the statement and the comments and views of the appropriate federal, state, and local agencies that are authorized to develop and enforce environmental standards shall be made available to the governor and to the public and must accompany the proposal through the agency review processes. **Subject to subsection (c), the air pollution control board, water pollution control board, and solid waste management board boards** shall by rule define the actions that constitute a major state action significantly affecting the quality of the human environment. (D) Study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources.

(E) Recognize the long range character of environmental problems and, where consistent with the policy of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize state cooperation in anticipating and preventing a decline in the quality of the environment.

(F) Make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment.

(G) Initiate and use ecological information in the planning and development of resource oriented projects.

**(b) With respect to:**

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1 (1) the removal of timber under IC 14-23-4-1; and  
 2 (2) the replanting of trees after the removal of timber under  
 3 IC 14-23-4-1;  
 4 the department of natural resources shall comply with subsection  
 5 (a)(2)(C) and IC 14-23-4-1.5.

6 (c) The boards shall include in the definition of actions that  
 7 constitute a major state action significantly affecting the quality of  
 8 the human environment under subsection (a)(2)(C):

9 (1) the removal of timber under IC 14-23-4-1; and

10 (2) the replanting of trees after the removal of timber under  
 11 IC 14-23-4-1.

12 SECTION 2. IC 13-12-4-8 IS AMENDED TO READ AS  
 13 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. **Except as provided**  
 14 **in IC 14-23-4-1(b)**, this chapter may not be construed to require an  
 15 environmental impact statement for the issuance of a license or permit  
 16 by any state agency.

17 SECTION 3. IC 14-8-2-162 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 162. "Migratory birds",  
 19 for purposes of IC 14-22 **and IC 14-23-4**, refers to the following birds:

20 (1) Migratory game birds, including the following:

21 (A) Anatidae, or waterfowl, including brant, wild ducks, wild  
 22 geese, and swans.

23 (B) Gruidae, or cranes, including little brown, sandhill, and  
 24 whooping cranes.

25 (C) Rallidae, or rails, including coot, gallinules, sora, and  
 26 other rails.

27 (D) Limicolae, or shorebirds, including avocets, curlews,  
 28 dowitchers, godwits, knots, oyster catchers, phalaropes,  
 29 plovers, sandpipers, snipe, tilts, surf birds, turnstones, willet,  
 30 woodcock, tattlers, and yellow legs.

31 (E) Columbidae, or pigeons, including doves and wild pigeons.

32 (2) Migratory insectivorous birds, including the following:

33 (A) Cuckoos.

34 (B) Flickers and other woodpeckers.

35 (C) Nighthawks or bull-bats, and whippoorwills.

36 (D) Swifts.

37 (E) Hummingbirds and flycatchers.

38 (F) Bobolinks, meadowlarks, and orioles.

39 (G) Grosbeaks.

40 (H) Tanagers.

41 (I) Martins and other swallows.

42 (J) Waxwings.

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- 1 (K) Shrikes and vireos.
- 2 (L) Warblers.
- 3 (M) Pipits.
- 4 (N) Catbirds and brown thrashers.
- 5 (O) Wrens.
- 6 (P) Brown creepers.
- 7 (Q) Nuthatches.
- 8 (R) Chickadees and titmice.
- 9 (S) Kinglets and gnat catchers.
- 10 (T) Robins and other thrushes.
- 11 (U) All other perching birds that feed entirely or chiefly on
- 12 insects.
- 13 (3) Other migratory nongame birds, including the following:
- 14 (A) Auks.
- 15 (B) Auklets.
- 16 (C) Bitterns.
- 17 (D) Fulmars.
- 18 (E) Gannets.
- 19 (F) Grebes.
- 20 (G) Guillemots.
- 21 (H) Gulls.
- 22 (I) Herons.
- 23 (J) Jaegers.
- 24 (K) Loons.
- 25 (L) Murres.
- 26 (M) Petrels.
- 27 (N) Puffins.
- 28 (O) Shearwaters.
- 29 (P) Terns.

30 SECTION 4. IC 14-9-7-5 IS ADDED TO THE INDIANA CODE  
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 32 1, 2008]: **Sec. 5. (a) The position of state forest ecologist is created**  
 33 **in the department. The state forest ecologist reports directly to the**  
 34 **director.**

35 **(b) The state forest ecologist shall:**

- 36 **(1) determine migratory bird nesting seasons for purposes of**
- 37 **IC 14-23-4-1(c)(2);**
- 38 **(2) prepare environmental assessments as required by**
- 39 **IC 14-23-4-1.5;**
- 40 **(3) assist the division of fish and wildlife under**
- 41 **IC 14-22-34-22; and**
- 42 **(4) carry out other duties assigned by the director.**

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SECTION 5. IC 14-10-2-1, AS AMENDED BY P.L.246-2005, SECTION 115, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. **(a)** The commission may do the following:

(1) Take the action that is necessary to enable the state to participate in the programs set forth in 16 U.S.C. 470 et seq.

(2) Promulgate and maintain a state register of districts, sites, buildings, structures, and objects significant in American or Indiana history, architecture, archeology, and culture and expend money for the purpose of preparing comprehensive statewide historic surveys and plans, in accordance with criteria established by the commission, that comply with the standards and regulations promulgated by the United States Secretary of the Interior for the preservation, acquisition, and development of the properties.

(3) Establish in accordance with criteria established by the United States Secretary of the Interior a program of matching grants-in-aid to public agencies for projects having as their purpose the preservation for public benefit of properties that are significant in American or Indiana history, architecture, archeology, and culture.

(4) Accept grants from public and private sources, including those provided under 16 U.S.C. 470 et seq.

(5) Establish fees for the following:

(A) Programs of the department or the commission.

(B) Facilities owned or operated by the department or the commission or a lessee of the department or commission.

(C) Licenses issued by the commission, the department, or the director.

(D) Inspections or other similar services under this title performed by the department or an assistant or employee of the department.

(6) Adopt rules under IC 4-22-2 for the establishment of fees under subdivision (5).

**(b) The commission shall hear appeals under IC 14-23-4-1.5.**

SECTION 6. IC 14-22-34-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 22. (a) The division shall, with the assistance of the state forest ecologist, prepare a proposed written management plan for the following:**

**(1) Each endangered species as defined in section 1 of this chapter.**

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(2) Each species determined under federal law to be threatened or endangered.

(b) The division shall do the following:

(1) Make each proposed written management plan prepared under subsection (a) available to the public, including posting the plan on the department's Internet web site.

(2) Include the following with each proposed written management plan made available to the public under subdivision (1):

(A) Notice of a thirty (30) day period during which members of the public may submit to the division written comments on the proposed written management plans referred to in subdivision (1).

(B) The means, including the post office address and electronic mail address, by which members of the public may submit the comments referred to in clause (A).

(3) Consider all comments received under subdivision (2) and finalize the written management plans, making any amendments to the proposed written management plans the division considers appropriate based on the comments.

(4) Implement the written management plans finalized under subdivision (3).

SECTION 7. IC 14-23-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. The department shall do the following:

(1) Have the care, custody, and control of the forest land owned by the state, exclusive of state parks.

(2) Adopt necessary rules to properly enforce this chapter.

(3) Establish, operate, and maintain nurseries for the production of trees to be used in reforestation. The trees may be:

(A) used to reforest land owned by the state;

(B) supplied to owners of private land at a price not exceeding cost of production; or

(C) used for planting on public roads or land under the terms that are considered by the department to be for the public benefit.

(4) Prepare, print, post, or distribute printed matter relating to forestry.

(5) Make investigations or experiments with regard to forestry questions.

(6) Subject to the approval of the governor, purchase land and forests. For the purpose of acquiring land and forests, the

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commission may exercise the right of eminent domain in the manner provided in IC 14-17-3.

(7) Receive and accept, in the name of the people of Indiana, by gift or devise, the fee or other estate in land or forests.

(8) Examine the forest land owned by the state or by a state institution for the purpose of advising and cooperating in securing proper forest management of the land.

(9) Employ, with approval of the authorities having control of the state penal institutions, convicts committed to a penal institution for the purpose of producing or planting trees, building roads, or doing other work in the forests and in clearing, draining, or developing land purchased or acquired by the state for forestry purposes.

(10) Propagate trees and shrubs for state institutions or for planting along highways. A common carrier may transport trees or shrubs grown by the state at a rate less than the established tariff to and from points within Indiana.

(11) Have the custody of all abstracts of title, papers, contracts, or related memoranda, except original deeds to the state, for land purchased or received under this section.

(12) Examine private forest land:

(A) upon request of; and

(B) at the expense of;

the owner for the purpose of advising the owner on the proper methods of forest management.

**(13) Give priority to the establishment in state forests of trails that:**

**(A) are for the use of pedestrians only; and**

**(B) are located in areas free of development.**

SECTION 8. IC 14-23-4-1, AS AMENDED BY P.L.66-2006, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) It is the public policy of Indiana to protect and conserve the timber, water resources, wildlife, and topsoil in the forests owned and operated by the division of forestry for the equal enjoyment and guaranteed use of future generations. However, **except as provided in subsection (c)**, by the employment of good husbandry, timber that has a substantial commercial value may be removed in a manner that benefits the growth of saplings and other trees by thinnings, improvement cuttings, and harvest processes and at the same time provides a source of revenue to the state and counties and provides local markets with a further source of building material.

(b) ~~Notwithstanding subsection (a);~~ IC 13-12-4 ~~does not apply~~

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**applies to forestry management practices of the division of forestry. Before the department may issue, execute, extend, or renew a permit, lease, or contract under section 3 of this chapter for:**

- (1) the removal of merchantable timber from a state forest under subsection (a); or**
- (2) the replanting of trees after the removal of timber under subsection (a);**

**the department must prepare an environmental impact statement required under IC 13-12-4-5 and comply with section 1.5 of this chapter.**

**(c) Timber may not be removed under subsection (a) as follows:**

- (1) Less than five hundred (500) yards from a trail that existed on or after January 1, 2008, in:**

- (A) Morgan-Monroe State Forest; or**
- (B) Yellowwood State Forest.**

- (2) During the nesting season, as determined by the state forest ecologist based on objective sources, of migratory birds in a state forest.**

**SECTION 9. IC 14-23-4-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1.5. (a) Before January 15 of each calendar year after 2008, the department shall do the following:**

- (1) Prepare for each state forest a written statement of the following proposed activities during the calendar year:**

- (A) The removal of timber under section 1(a) of this chapter.**
- (B) The replanting of trees after the removal of timber under section 1(a) of this chapter.**

- (2) Make each written statement prepared under subdivision (1) available to the public, including posting the statement on the department's Internet web site.**

- (3) Include the following with each written statement made available to the public under subdivision (2):**

- (A) Notice of a thirty (30) day period during which members of the public may submit to the department written comments on the proposed activities referred to in subdivision (1).**
- (B) The means, including the post office address and electronic mail address, by which members of the public may submit the comments referred to in clause (A).**

**(b) The department shall provide to the state forest ecologist the written comments received under subsection (a)(3).**

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(c) The state forest ecologist shall prepare the statement required by IC 13-12-4-5(a)(2)(C) for each of the proposed activities referred to in subsection (a)(1). In preparing the statement, the state forest ecologist shall consider:

- (1) the written comments received under subsection (b);
- (2) threatened and endangered species management plans under IC 14-22-34-22; and
- (3) any other information the state forest ecologist considers relevant;

(d) The department shall do the following:

(1) Make each statement prepared under subsection (c) available to the public, including posting the statement on the department's Internet web site.

(2) Include with each written statement made available to the public under subdivision (1) the following:

(A) Notice of a thirty (30) day period during which members of the public may submit to the department written comments on the statement prepared under subsection (c).

(B) The means, including the post office address and electronic mail address, by which members of the public may submit the comments referred to in clause (A).

(e) After considering all comments received under subsection (d)(2), the department shall prepare for each proposed activity referred to in subsection (a)(1) a written determination to do one (1) of the following:

- (1) Proceed with the proposed activity on a specified schedule.
- (2) Delay the proposed activity until a date to be determined later.
- (3) Cancel the proposed activity.

The department shall make its determination under this subsection available to the public, including posting the statement on the department's Internet web site.

(f) If the department determines to proceed with the proposed activity under subsection (e)(1), the department shall include the following with each determination made available to the public under subsection (e):

- (1) Notice of a thirty (30) day period during which a member of the public may appeal to the natural resources commission the department's determination to proceed with the proposed activity.
- (2) The means by which a member of the public may appeal

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under subdivision (1).

(g) If the department determines to delay the proposed activity under subsection (e)(2) and later determines to proceed with the proposed activity, the department shall do the following:

(1) Make its determination to proceed under this subsection available to the public, including posting the determination on the department's Internet web site.

(2) Include with the determination to proceed the information required by subsection (f).

(h) If a member of the public appeals under subsection (f) or (g), the department may proceed with the proposed activity referred to in subsection (a)(1) that is the subject of the appeal only to the extent that the appeal is determined in the department's favor.

SECTION 10. IC 14-23-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) **After meeting the requirements under section 1(b) of this chapter, and subject to section 1(c) of this chapter,** the department may issue permits, execute leases, or contract for the removal of merchantable timber from the state forests under this chapter. A permit, lease, or contract must do the following:

(1) Determine and fix the area within which it is lawful and in the best interests of the state to permit the removal of timber.

(2) Specify the nature of the timber to be removed.

(b) A permit, lease, or contract must include specific provisions for at least the following:

(1) Adequate fire prevention measures.

(2) The completion of harvesting operations, which includes the disposition of the slash and repair of rights-of-way.

(3) Granting of rights-of-way.

(4) Compliance with rules adopted by the department to carry out this chapter.

(5) Reports to the department by the person authorized to remove the timber.

(6) Authorization for the state forester or the state forester's designee to inspect the activities.

(7) Revocation of permits for failure to comply with any of the following:

(A) This chapter.

(B) Rules adopted under this chapter.

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